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**REMARKS**

Reconsideration of the application is respectfully requested in view of the discussion presented below.

The new ground for rejection of claims 1-5, and the finality of the rejection, are addressed in the remarks below and could not have been discussed earlier.

Claims 1-5 are now present in this application.

**Discussion****Finality of Office Action**

It is respectfully submitted that the office action should not have been made final and that the finality of the action should be withdrawn so that the Applicant is not forced into filing a premature appeal or an unnecessary request for continuation.

The currently pending office action is the third issued for this application. The first office action was mailed on February 10, 2005 and rejected all claims as being unpatentable over Rohr, *et al.* (U.S. Patent 5,271,531), a reference discussed in paragraph 0004 of this application. In response, the Applicants filed a response on May 10, 2005 that included an amendment of claim 1.

The second office action was mailed on August 29, 2005. This non-final office action was identical in wording to the first office action and did not discuss the amendment and arguments presented by the Applicant. The Applicant filed a response on November 29, 2005 noting the similarity as well as the lack of a response to the amendment and arguments, and repeated the arguments made earlier in response to the first office action.

The currently-pending office action rejected all claims as being unpatentable over Mueller, U.S. Patent 6,112,951. Mueller is a reference cited by the first two office actions as being made of record and considered pertinent to Applicant's disclosure. The rejection over Rohr, *et al.* appears to have been withdrawn *sub silentio*, because this rejection was not repeated and the Examiner acknowledged considering the arguments presented by the Applicant in his response to the second office action. The Examiner is respectfully requested to confirm that understanding in the next paper from the Office.

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The Examiner made the third office action FINAL because "Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action." The Applicant, however, did not amend the application in response to the second office action. The amendment in response to the *first* office action therefore could not have necessitated the new ground for rejection presented in the *third* office action unless the Examiner is presenting the third office action as being the second office action *nunc pro tunc*. However, no authority for such a procedure has been offered.

The examination of this application also has been piecemeal, contrary to the policy announced in MPEP 707.07(g). The Mueller reference was cited as being of record in the first office action. It should not be used now to support a *final* rejection.

It is respectfully requested that the finality of the third and currently pending office action be withdrawn.

#### Rejection of Claims 1-5 over Mueller

The Examiner rejected claims 1-5 under 35 USC 103(a) as being unpatentable over Mueller. The Applicant respectfully disagrees that a *prima facie* case of unpatentability has been established, for the reasons given below.

The Examiner considered Mueller to disclose all of the limitations of claim 1 except the limitation concerning the thickness of the flexible lateral part in relation to the vertical part and the peripheral portion of the automatic sealing part. It is submitted that Mueller does not teach or suggest *other* limitations of claim 1, namely at least the portions of claim 1 that are highlighted and numbered below:

1. A dispensing closure comprising:
  - a closure body adapted to be assembled to the opening of a container, said closure body defining a dispensing passage for communication between the container interior and exterior through the container opening; and
  - an automatic sealing valve disposed in said closure body across said dispensing passage, said valve opening in response to increased container pressure and automatically closing in response to released container pressure, said closure body integrally comprising a cylindrical body for attachment

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to said container, a horizontal covering part extending inwardly from the top of said cylindrical body, a vertical covering part extending upwardly from the inner end of said horizontal covering part, and a top covering part extending inwardly from the upper end of said vertical covering part [1] *and protruding downwardly at its lower surface*, which forms a generally tubular spout; and

(b) [2] *said automatic sealing valve having a static member for engagement in the inside space made by said horizontal covering part, vertical covering part and top covering part of said closure body*, and a dynamic member for being movable by pressure within said container between an open position and a closed position; wherein

[3] *said static member comprises a horizontal part corresponding to said horizontal covering part and a vertical part corresponding to said vertical covering part*, and said dynamic member comprises a flexible lateral part extending inwardly from the top of said vertical part and then bending downwardly, and an automatic sealing part extending inwardly from said flexible lateral part and having a central opening-closing slit; and

[4] *the top surface of a connect portion between said vertical part and said flexible lateral part has a generally V-shaped groove*, and the thickness of said flexible lateral part is less than 1/3 of the thickness of said vertical part and simultaneously less than 1/3 of the thickness of the peripheral portion of said automatic sealing part, and the top surface of said automatic sealing part forms the shape of a reverse dome, and the outer, peripheral surface of said automatic sealing part slopes outwardly, downwardly at least 5° from its vertical axis.

Mueller clearly does not teach or suggest highlighted limitation [1]. The “annular attachment surface” 58 of Mueller does not protrude downwardly at its lower surface and is clearly horizontal. *See* Figs. 7-9 of Mueller.

Mueller clearly does not teach or suggest highlighted limitation [2]. The “pressure-openable dispensing valve” 54 of Mueller is bonded to a top-covering part of the “closure body or end structure” 50 and plainly does not have “a static member for engagement in the inside space made by said horizontal covering part, vertical covering part and top covering part of said

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closure body," as may be seen in Figs. 1, 5, 6, 8, and 11 of Mueller and is discussed at, *e.g.*, column 7, lines 61-67 of Mueller.

Mueller clearly does not teach or suggest highlighted limitation [3]. The "flange" 72 of the "pressure-openable dispensing valve" 54 of Mueller is bonded to the "annular attachment surface" 58 in the "closure body or end structure" 50 but it cannot be said to comprise "a horizontal part corresponding to said horizontal covering part and a vertical part corresponding to said vertical covering part" of the "closure body or end structure" 50.

Mueller clearly does not teach or suggest highlighted limitation [4]. The "pressure-openable dispensing valve" 54 of Mueller has no discernable "generally V-shaped groove" or any groove at all on "the top surface of a connect portion." None is shown in Fig. 5 of Mueller, contrary to the statement in the office action.

Mueller therefore lacks at least four limitations recited by claim 1 in addition to the one discussed by the Examiner. A *prima facie* case of unpatentability over Mueller is not made out and the rejection under 35 USC 103(a) over Mueller should be withdrawn.

Claims 2-5 depend on claim 1. The Applicant respectfully submits that at least in view of their dependency on claim 1, claims 2-5 are patentable over Mueller.

### Conclusion

The Applicant submits that the finality of the office action should be withdrawn and the application is in condition for allowance. The Examiner is respectfully urged to pass this case to issue.

The Examiner is respectfully invited to telephone the undersigned attorney as needed in order to advance the examination of this application.

\* \* \*

The Commissioner is authorized to charge any additional fees which may be required or credit overpayment to deposit account no. 12-0415. In particular, if this response is not timely filed, then the Commissioner is authorized to treat this response as including a petition to extend the time period pursuant to 37 CFR 1.136 (a) requesting an extension of time of the number of

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months necessary to make this response timely filed and the petition fee due in connection

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